

SEALED

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DEPUTY CLERK

 **ORIGINAL**

UNITED STATES OF AMERICA, *ex rel.*
THOMAS KENJARSKI, M.D.,

Plaintiffs,

v.

U.S. ANESTHESIA PARTNERS, INC.,
et al.,

Defendants.

Civil Action No. 3:17-CV-01713-D

FILED IN SEALED CASE

NOTICE TO THE COURT

Plaintiff United States of America (“United States” or “Government”), by and through its undersigned counsel, respectfully submits this Notice to the Court. This Notice details certain facts material to calculating the time period during which the United States may exercise its option to intervene in the case, and during which time documents filed in this case remain under seal, as follows:

1. On June 28, 2017, Thomas Kenjarski, M.D. (relator) filed his complaint in this action, under seal, pursuant to the *qui tam* provisions of the False Claims Act, as amended, 31 U.S.C. § 3730 *et seq.* (“the FCA” or “the Act”). Under the FCA’s *qui tam* provisions, a private person may file an action on behalf of the United States to recover damages.

2. A *qui tam* relator is required to file the Complaint under seal and serve it on the United States, but not on the defendants, so that the government may investigate the allegations in the Complaint and make an informed decision regarding its right to intervene in the action before the defendants are made aware of the case. The Act further provides:

A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) [now Rule 4(i)] of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders.

31 U.S.C. § 3730(b)(2).

3. In FCA cases, Federal Rule of Civil Procedure 4(i) requires that service on the United States be completed by serving process on both the United States Attorney in the district where the lawsuit is filed and the United States Attorney General (“Attorney General”). *See* FED. R. CIV. P. 4(i)(1)(A) & (B).

4. In the instant case, relator served the United States Attorney’s Office for the Northern District of Texas (“USAO”) with the complaint and written disclosure on or about July 7, 2017. Relator did not serve the Attorney General with the complaint and written statement of evidence as required by 31 U.S.C. § 3730(b)(2).

5. On August 7, 2017, the Government filed a Notice to the Court informing the Court that relator had not served the Attorney General with the complaint and

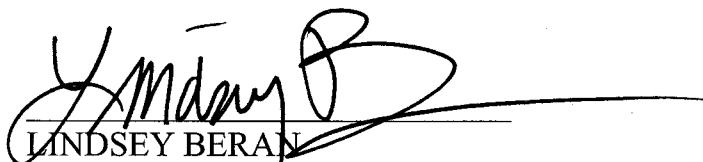
required written statement of evidence.

6. Relator served the Attorney General with the complaint and written disclosure on August 7, 2017.

7. Accordingly, the United States respectfully notifies the Court that service was perfected, pursuant to FED R. CIV. P. 4(i) and 31 U.S.C. § 3730(b)(2), on August 7, 2017. The Government therefore has 60 days from that date, or until October 6, 2017, to advise the Court of its intervention decision or to request that the Court extend the seal for good cause.

Respectfully submitted,

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Attorneys for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice to the Court was mailed via regular mail on this 29th day of August, 2017 to:

Christopher A. Payne
Tim Robinson
Christina Alstrin
Aaron Robinson
PAYNE ROBINSON, L.L.P.
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Lindsey Beran
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